

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 178 OF 2025

M/s. Kumar Enterprises and ors. ...Applicants

Versus

Kumar Onkar Shree Co-operative Housing
Society Ltd. and ors. ...Respondents

Mr. Shon Gadgil, a/w Krunal Sarode, i/b Aroadia Legal
Associates, for the Applicants.

Mr. Swaroop Godbole, a/w Akshay Nagargoje, for
Respondents.

CORAM: N. J. JAMADAR, J.

DATED: 26th MARCH, 2025

ORDER:-

1. Heard the learned Counsel for the parties.
2. This revision application is directed against an order dated 23rd October, 2024 passed by the learned Civil Judge, Pune, whereby an application preferred by the applicants – defendant Nos.1 to 5 for rejection of the plaint under the provisions of Order VII Rule 11 of the Civil Procedure Code, 1908 (the Code) came to be rejected.
3. Applicant No.1 is a registered partnership – firm. Application Nos.2 to 5 are the partners of applicant No.1. Applicant No.1 – firm had acquired the rights to develop the suit property bearing Survey No.48/14B/1B (suit property 1A) and

Survey No.48/116A/21B (suit property 1B). Applicants – defendant Nos.1 to 5 developed a project “Kumar Onkar Shree” at suit properties 1A and 1B. It consists of two wings. ‘B’ Wing consists of 32 Apartments. The owners of the apartments in ‘B’ Wing have formed a Society namely “Kumar Onkar Shree Sahakari Grihrachana Sanstha Maryadit – plaintiff No.1. The said society is registered under the Provisions of Maharashtra Co-operative Societies Act, 1960 (“the Act, 1960”). The owners of the apartments in ‘A’ Wing have formed a society, namely, Sai Ratna Residency Buildings Sahakari Grihrachana Sanstha Maryadit – defendant No.7. It is also a registered Co-operative Society. There is no dispute *inter se* plaintiff and defendants No.7.

4. Plaintiff No.1 Society filed an application before the Registrar of Co-operative Societies for unilateral deemed conveyance. By an order dated 20th November, 2023, the Deputy Registrar of Co-operative Societies allowed the said application and granted unilateral deemed conveyance to the plaintiff – Society.

5. On 24th January, 2024, the applicants submitted a revised plan for development to PMRDA – defendant No.6 – respondent No.4. Post sanction of the revised plan, the plaintiffs addressed

a notice to the applicants to stop the construction on the subject property as per revised sanctioned plan. Eventually the plaintiffs instituted the suit RCS/1521/ 2024 seeking declaration that the commencement certificate dated 6th May, 2024 issued by defendant No.6 is illegal; to restrain defendant Nos.1 to 5 from carrying out any construction over the suit property and create third party interest over the suit property and also award compensation for the illegal construction carried out by the defendants over the suit property.

6. Defendant Nos.1 to 5 filed an application for rejection of the plaint on the premise that the plaint did not disclose any cause of action and, even otherwise, the suit was barred by the provisions contained in Section 79 read with Sections 14 and 31 of the Real Estate (Regulation and Development) Act, 2016 (“the RERA Act, 2016”).

7. By the impugned order, the learned Civil Judge was persuaded to reject the application observing *inter alia* that apart from the issue of legality and validity of the commencement certificate issued by defendant No.6, the suit also involves the issue of injunction and damages and, therefore, it cannot be said that the suit was barred by the provisions of Section 79 of the RERA Act, 2016.

8. Mr. Gadgil, the learned Counsel for the applicants, submitted that the learned Civil Judge lost sight of the fact that the principal relief in the plaint was that of declaration qua the revised sanctioned plan and the commencement certificate issued by defendant No.6. The relief of injunction and compensation was consequential. Therefore, the bar contained in Section 79 of the RERA, 2016 operated with full force and rigour.

9. Mr. Gadgil further submitted that the suit was also barred by the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act"). Mr. Gadgil, however, fairly submitted that the said ground was not taken before the learned Civil Judge. Yet it being a pure question of law, this Court can consider the bar of the tenability of the suit under Section 149 of the MRTP Act, even in exercise of revisional jurisdiction.

10. Mr. Godbole, the learned Counsel for respondent Nos.1 to 3 – plaintiffs countered the submissions on behalf of the applicants. It was submitted that the society was agitating its rights under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA"). The provisions of the MOFA are not

pari-materia Section 14 of the RERA, 2016. Under Section 7 of the MOFA, a promoter is not entitled to make any alteration or addition in the structure of the building without previous sanction of all the persons, who have agreed to take the flats in such building. Moreover, under Section 88 of the RERA, 2016, the provisions of the RERA, 2016 are not in derogation of the provisions of any other law and are explicitly stated to be in addition to the other provisions of law. Since the plaintiffs are claiming the relief of injunction and damages, which cannot be awarded by the Tribunal, the learned Civil Judge was justified in declining to reject the plaint.

11. At the stage of the consideration for the rejection of the the plaint, the Court has to only consider the averments in the plaint and the documents annexed with it. Whether the plaint discloses a cause of action or not has to be gathered by a meaningful reading of the plaint. Upon perusal of the plaint, it becomes abundantly clear that the substance of the grievance of the plaintiffs is that under the original sanctioned lay out, defendant No.1 was to construct two more buildings i.e. 'C' and 'D'. However, under the revised sanctioned plan, defendant No.1 has made substantial alteration without obtaining the consent of the plaintiffs and defendant No.7 Society. Defendant Nos.1 to

5 are proposing to construct 'C2' building upon the open space, earmarked under the original sanctioned plan. The common roads, open spaces and amenity spaces are substantially altered to the prejudice of the owners of the apartments in Wing-A and Wing-B. Hence, the action of the promoter is in flagrant breach of the provisions contained in the MOFA.

12. Mr. Gadgil submitted that the breaches, complained of by the plaintiffs squarely fall within the ambit of the provisions contained in Section 14 of the RERA, 2016. If the plaintiffs are aggrieved by the sanction of the revised plan, the plaintiffs have an efficacious remedy under Section 31 of the RERA, 2016 to file a complaint before the Authority constituted thereunder. Consequently, the bar under Section 79 of the RERA, 2016 is attracted.

13. The aforesaid submission is not worthy of acceptance unreservedly. First and foremost, it is necessary to note the plaintiffs are seeking injunctive relief against defendant Nos.1 to 5. The relief of injunction cannot be granted by the authority under the RERA, 2016. Moreover, the dispute cannot be said to be squarely covered by the provisions of Section 14 of the RERA, 2016. There is a significant distinction in the matter of alteration of the sanctioned plan with the consent of the apartment

owners/unit holders under MOFA and RERA. Under Section 7 of the MOFA, the requirement is that of the consent of all the flat purchasers. Under Section 14, however, alteration in the sanctioned plans, lay out plans, specification of the building, other areas within the project can be made with the previous consent of at least 2/3rd of the allottees, who have agreed to take apartment in such buildings. The protection granted under RERA cannot be said to be co-extensive with the protection under the MOFA. The latter is more expansive. Thus, I find substance in the submission of Mr. Godbole that the principle that the provisions of RERA, 2016 are in addition to and not in derogation of the provisions of any other law for the time being in force, have a clear application to the facts of the case at hand.

14. In any event, all the reliefs which are claimed in the plaint, cannot be granted by the Authority under the RERA, 2016, especially the relief of injunction. Thus, the jurisdiction of the Civil Court cannot be said to have been ousted as the Authority, created under the RERA, 2016, cannot do all that, which can conceivably be done by the Civil Court in a comprehensive suit for declaration and injunction.

15. So far as the bar under Section 149 of the MRTP Act, since the issue was not raised before the trial court, it may not

appropriate to delve deep into the said aspect of the matter. Even otherwise, having regard to the nature of the dispute and the rights, which the plaintiffs claim, have been impaired by the actions of defendant Nos.1 to 5 and the purported breach of the obligations on the part of defendant Nos.1 to 5, especially in the light of the provisions of MOFA, the reliefs claimed in the suit cannot be said to be barred by the provisions of Section 149 of the MRTP Act. The challenge is to the action of defendant Nos.1 to 5 in breach of the obligations and the issue of commencement certificate is but a manifestation of the alleged illegal action of defendant Nos.1 to 5.

16. In theses circumstances, this Court does not find any infirmity in the impugned order

17. The application, therefore, stands rejected.

[N. J. JAMADAR, J.]